

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SHANON G.

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES  
REGIONAL CENTER

Service Agency.

OAH No. L 2006060480 (respite)

OAH No. L 2006060481 (day program)

**DECISION**

Administrative Law Judge Deborah Myers, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on August 1, 2006.

Claimant was represented by his foster mother, Dorrie W.

Julie Ogeltree, Attorney at Law, represented South Los Angeles Regional Center (Service Agency.) Johanna Arias, Fair Hearings Coordinator for the Service Agency was also present.

At the administrative hearing, the parties settled the issue of paying for Claimant's summer camp, a partial issue in OAH case no. L2006060481. That issue is not addressed in this Decision.

Oral and documentary evidence was received and the matter was submitted. The parties stipulated to keep the record open until August 21, 2006.

**ISSUES**

1. Whether Service Agency should provide respite services for Claimant's foster mother?
2. Whether Service Agency should fund an after-school program for Claimant for the 2006-2007 school year?

## FACTUAL FINDINGS

1. Claimant is 10 years old. He lives with his foster mother, Dorrie W., where he was placed by the Los Angeles County Department of Children and Family Services (DCFS) in May 2005. He is a consumer of the Service Agency under the diagnosis of mild mental retardation. Prior to his placement with Dorrie W., Claimant was a consumer of Harbor Regional Center. Claimant receives Medi-Cal for his medical needs.

2. Claimant attends school through the Los Angeles Unified School District. He receives special education services in the form of special day classes and transportation. Claimant is under the care of a psychiatrist who diagnosed him with schizophrenia, attention deficit-hyperactivity disorder and Parkinson's disease. Claimant experiences tremors which affect his fine motor skills.

3. Dorrie W. advocates for Claimant's special education needs. She has requested occupational therapy and a one-to-one aide from the school district. Dorrie W. stated that Claimant has no behavior plan, and is requesting behavior intervention services from the Service Agency to deal with his aggressive and socially inappropriate behavior. She and the service coordinator are working together to achieve that goal. Dorrie W. believes an after-school program will help Claimant's behavioral issues and socialization issues. She has located two such programs in her area, Harry A. Mier at a cost of \$8.00 an hour, and Martin Luther King at a cost of \$20.00 a week<sup>1</sup>, which were among the generic agency referrals the service gave her. The school district would provide the transportation to the programs, where Claimant would attend from approximately 2:30<sup>2</sup> in the afternoon until 6:00 p.m. These after-school programs provide activities such as arts and crafts, socialization, cooking, swimming, help with homework, and life skills training. Dorrie W. believes this program will help him positively interact with his peers and help his daily living skills.

4. On June 19, 2006, Dorrie W. and a service coordinator met and prepared Claimant's Individualized Program Plan (IPP). At that time, they discussed Claimant's needs for appropriate socialization. The service agency discussed after-school recreational/social programs with her, and no agreement was reached. Dorrie W. explored after-school programs, and filed a Fair Hearing Request.

5. As a foster mother, Dorrie W. is paid a D-rate from DCFS. This is an incremental rate based on Claimant's special needs and is approximately \$1137.00 a month. Dorrie W. described Claimant as needing constant supervision for personal

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<sup>1</sup> Claimant prefers the Harry A. Mier program as it is closer to her home, is a shorter bus ride from school and shorter car ride picking up the Claimant.

<sup>2</sup> 1:30 p.m. beginning October 2006.

safety and hygiene issues. He requires one person to attend to him at all times, including going to the grocery store. Dorrie W. has hired an aid to join them on such outings at the rate of \$11.00 an hour.

6. Dorrie W. has been committed to Claimant, and he has thrived under her care. When he was first placed with her in 2005, he had no communication skills and babbled. Now, he can speak in eight-word sentences. In 2005, he had no comprehension skills. Now, she can give him several instructions that he is able to carry out. He can play basketball and shoot hoops.

7. Dorrie W. lives with her husband and another foster child. She wants to have respite to relieve her of the heavy responsibility of worrying about him and caring for him, as he cannot do anything independently. She believes she will benefit from respite to be able to collect her thoughts, feel regenerated, and bond with her husband as a couple. Dorrie W. wants Claimant to reside at home as it provides the least restrictive environment. Dorrie W. did not state how much respite time she wanted.

6. The evidence did not establish that another agency was responsible for providing an after-school program for Claimant.

## LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities Act, (Lanterman Act) Welfare and Institutions Code (Welf. & Inst. Code) section 4500 et seq., the State of California accepts responsibility for persons with developmental disabilities.<sup>3</sup> As defined in the Lanterman Act, the Service Agency must provide persons with developmental disabilities with services and supports in natural community settings which promote the consumer's participation in their educational decisions. (Welf. & Inst. Code §4501.)

2. These services and supports must be directed toward the alleviation of a developmental disability, toward the habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive lives. (Welf. & Inst. Code § 4512, subd. (b).)

### After-school program

3 The Service Agency is required to secure needed services and supports and to advocate for and protect the civil, legal, and service rights of persons with developmental disabilities. The Lanterman Act requires the Service Agency to achieve the stated goals and objectives in Claimant's IPP. The Lanterman Act requires the Service Agency to promote social and recreational activities for its

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<sup>3</sup> Welf. & Inst. Code §4501.

consumers. The Service Agency acknowledged its obligation to assist with the social/recreational needs of Claimant at his IPP when it discussed after-school programs with Dorrie W. and gave her referrals to generic agencies. (Welf. & Inst. Code §4648.)

4. The Service Agency is required to explore generic resources and the most cost effective means of fulfilling their obligations to the consumer. (Welf. & Inst. Code §4646, subd. (a).) “Decisions concerning the consumer’s goals, objectives, and services and supports that will be included [in the IPP] will be purchased by the regional center or obtained by generic agencies.” (Ibid.) A generic agency is any agency receiving public funds with a legal responsibility to serve all members of the general public. (Cal. Code of Regs., title 17, §54302, subdivision (a)(31).) DCFS is not a generic agency. DCFS does not have a legal responsibility to serve “all members of the general public.” DCFS’s exclusive purpose is to be responsible of the care, custody, control and conduct of dependent children of the court who have suffered abuse or neglect as defined by Welfare and Institutions Code section 300. (Welf. & Inst. Code §362.5.)

5. Welfare and Institutions Code section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services. Welfare and Institutions Code §4659, subdivision (a)(1) requires a regional center to identify and pursue all possible sources of funding, including “Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, . . . school districts . . .” The Service Agency did not identify any other agency required to fund Claimant’s IPP goal.

6. A foster parent is an entity or individual who is paid by DCFS with AFDC-foster care funds in return for the 24 hour care and supervision for the foster child. In exchange for this payment, the foster parent agrees to provide care and supervision which includes “food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, and reasonable travel to the child’s home for supervision.” (Welf. & Inst. Code §11460.) Notably, the codified foster parent’s responsibility does not include socialization, behavior intervention, or after school programs, and the Code is notably silent as to a foster parent’s obligation to pay for them. The service agency failed to establish that the foster parent was legally responsible for paying for Claimant’s IPP goal of an after-school program.

7. A foster parent, as a caregiver, is charged with promoting and encouraging participation in extra-curricular, enrichment and social activities of dependent children. A foster parent must use reasonable and prudent care in determining whether to grant permission for the child to participate in such activities. (Welf. & Inst. Code §362.05.) The foster parent’s obligation involves promoting

such opportunities and granting permission to participate in these activities. The Code is notably silent as to the foster parent's obligation to pay for such activities. The service agency failed to establish that the foster parent was legally responsible for paying for Claimant's IPP goal of an after-school program.

8. Under the regulations that govern the licensing of foster homes, a foster parent's responsibility includes group activities, physical activities, leisure activities with the foster family, and daily living training (Cal. Code of Regs., title 22, §83079). A third party can sponsor these activities, if the minor is properly supervised. The regulation is notably silent as to a foster parent's obligation to pay for such activities. The service agency failed to establish that the foster parent was legally responsible for paying for Claimant's IPP goal of an after-school program.

9. The Service Agency did not establish that DCFS or the foster parent was the proper generic governmental entity responsible for implementing and paying for Claimant's IPP goal of socialization, behavior intervention, and social-recreational activities. DCFS does not provide respite or after-school programs.

10. If a service specified in a client's IPP is not provided by a generic agency the Regional Center must fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP. (§4648, subd. (a)(1); *Association for Retarded Citizens v. Department of Developmental Services, supra*, (1985) 38 Cal.3d 384.) The two after school programs identified by claimant are both appropriate generic agencies. In the absence of another generic agency responsible for funding this IPP goal, the Service Agency is required to fund it.

11. When a developmentally disabled child is not eligible for Medi-Cal and lives with his/her natural family, parents must participate in the Family Cost Participation Program for camp, day care and respite. (Welf. & Inst. Code §4783.) This cost participation program establishes a sliding fee schedule for these families to contribute a portion of the costs. The Family Cost Participation Program does not apply to Dorrie W. as she is not a family member as established by Legal Conclusion 14. Moreover, Claimant is eligible for Medi-Cal, and therefore he is excluded from the Family Cost Participation Program as defined in Welfare & Institution Code §4783.

## Respite

12. Foster parents are permitted to hire short term babysitters to supervise a foster child. (Welf. & Inst. Code §362.04.)

13. The Lanterman Act requires the service agency to provide in-home respite to relieve family members from the constant demands of caring for a consumer. Respite is intermittent or regular temporary non-medical care and supervision of the consumer. (Welf. & Inst. Code §4690.2, subdivision (a), and Cal.

Code of Regs., title 17, §54302, subdivision (a)(38).) Dorrie W. established she bears the heavy burden of caring for Claimant and that she would benefit from respite from those demands.

14. A family member is defined as an individual who has a developmentally disabled person living with them, is responsible for their 24-hour care, and is not a licensed foster family home receiving funds from any public agency for their care and supervision. (Cal. Code of Regs., title 17, §54302, subdivision (a)(29).) Dorrie W., as a foster parent, is excluded from the definition of a family member and is not eligible for in-home respite services.

### ORDER

1. The Service Agency shall fund the generic after-school program selected by Dorrie W. to achieve Claimant's IPP goals.
2. The service agency is not entitled to a share of costs for this after-school program.
3. Foster mother Dorrie W. is not entitled to respite care.

DATED: August 30, 2006

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DEBORAH MYERS  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

**This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**